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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
THIRD APPELLATE DISTRICT
(Shasta)

THE PEOPLE,

Plaintiff and Respondent,

v.

BRITTON MICHAEL MICHENER,

Defendant and Appellant.

C069289

(Super. Ct. No. 10F1172)

Appointed counsel for defendant Britton Michael Michener asked this court to review the record to determine whether there are any arguable issues on appeal. (*People v. Wende* (1979) 25 Cal.3d 436 (*Wende*).) We find no arguable error and no concerns regarding presentence credits. We affirm the judgment.

On February 10, 2010, the victim, defendant's girlfriend and the mother of his child, awoke in the motel room where she had been living with defendant and their nine-month-old son for

approximately one week. She saw a man and a woman she did not know in the motel room drinking alcohol with defendant.

Not wanting to stay in the room with defendant while he was drinking, the victim attempted to leave with their son. As she reached the motel room door, defendant grabbed the victim and shoved her back into the room. He then kept the victim captive in the room for approximately two hours. During that time, defendant physically abused the victim and their son, twice grabbing their son from the victim's arms and throwing him across the room onto the bed.

The victim was finally able to escape with their son when defendant's mother came to the motel room and began yelling at defendant. After escaping, the victim contacted law enforcement and reported the abuse.

Defendant was arrested and charged with corporal injury to a spouse/cohabitant/or child's parent (Pen. Code, § 273.5, subd. (a)),¹ child abuse (§ 273a, subd. (a)), false imprisonment by violence (§ 236), misdemeanor possession of marijuana (Health & Saf. Code, § 11357, subd. (b)), and misdemeanor possession of a smoking device (Health & Saf. Code, former § 11364).

Defendant pled no contest to child abuse and inflicting corporal injury to a spouse/cohabitant/or child's parent. In exchange for his plea, the remaining charges were dismissed with

¹ Undesignated statutory references are to the Penal Code.

a *Harvey*² waiver. Unrelated misdemeanors in Shasta County case Nos. 10M0547 and 10M2483 also were dismissed with *Harvey* waivers; and unrelated Shasta County case No. 09M7813 was dismissed outright. Defendant admitted violating his probation in Shasta County case No. 09CTR7064.

Imposition of defendant's sentence was suspended and he was ordered to complete three years of formal probation. Along with the general terms of felony probation, defendant was ordered to complete an approved one-year batterer's program and an approved one-year child abuser's treatment program. Defendant also was ordered to pay various fines and fees.

In January 2011, defendant admitted violating his probation by being under the influence of alcohol and failing to report to his probation officer. Defendant was reinstated on probation under the original terms and conditions, but was additionally ordered to serve one day in jail with credit for time served and complete a 60-day adult work program.

Three months later, in April 2011, defendant admitted to repeatedly violating his probation by: (1) failing to complete the adult work program; (2) failing to complete a child abuser's treatment program; (3) failing to complete a domestic violence, batterer's program; (4) failing to abstain from using alcohol; and (5) testing positive for Darvon and marijuana. The trial court reinstated defendant's probation but sentenced him to a

² *People v. Harvey* (1979) 25 Cal.3d 754.

term of five years and four months in state prison and suspended execution of that sentence. The court also ordered defendant to serve 90 days in jail and to successfully complete a residential treatment program.

In July 2011, defendant again admitted to violating his probation by failing to complete the residential treatment program. The trial court subsequently terminated defendant's probation and ordered execution of the previously ordered prison sentence (modified to reflect the correct sentence of five years, not five years and four months). The previously imposed fines and fees were affirmed; defendant was ordered to pay the previously stayed probation revocation restitution fine of \$1,000 and an additional \$1,000 parole revocation restitution fine was imposed and stayed pursuant to section 1202.45. Defendant was awarded 242 days of custody credit (121 actual and 121 conduct).

Defendant appeals without a certificate of probable cause.

Appointed counsel filed an opening brief that sets forth the facts of the case and asked this court to review the record and determine whether there are any arguable issues on appeal. (*Wende, supra*, 25 Cal.3d 436.) Defendant was advised by counsel of the right to file a supplemental brief within 30 days of the date of filing of the opening brief. More than 30 days have elapsed and we have received no communication from defendant.

Having undertaken an examination of the entire record, we find no arguable error that would result in a disposition more favorable to defendant.

DISPOSITION

The judgment is affirmed.

HOCH, J.

We concur:

RAYE, P. J.

MAURO, J.